

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2546 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1 to 5 No.

JITUSING SHERSING BAVRI

Versus

STATE OF GUJARAT

Appearance:

MS SUBHADRA G PATEL for Petitioner

MR.HL JANI, AGP, for the Respondents.

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 14/07/98

ORAL JUDGEMENT

The petitioner, who is detained by an order dated 6-1-1998 passed by the Commissioner of Police, Surat City, under Section 3 (1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as "the PASA Act"), has filed this petition under Article 226 of the Constitution of India challenging the legality and validity of the order of detention.

In the grounds of detention supplied to the petitioner, the detaining authority has placed reliance on the two criminal cases registered against the petitioner for the offence under the Arms Act and the Bombay Police Act which are pending in the competent Court. Over and above these two cases, a further reliance is also placed on the three unregistered cases for the alleged incidents which took place on 17-8-97, 22-8-97 and 24-10-97. Briefly, the allegations made by the concerned witnesses of the said incidents, whose identity has not been disclosed to the petitioner in view of the privilege conferred upon the detaining authority under Section 9(2) of the PASA Act, are to the effect that the petitioner and his associates went to store the arms and ammunition in the house of the witness and the witness had refused.

In another incident, the concerned witness was beaten on the suspicion that he is the informant of the police, whereas in the last incident a demand of money was made and on being refused to accede to the said demand, the concerned witness was beaten. In all these cases many people gathered to see the incidents of beating. However, when the petitioner rushed towards the crowd with open knife, in order to save their lives, the people dispersed.

On the basis of the aforesaid material, the detaining authority recorded a finding that the petitioner is a dangerous person within the meaning of Section 2(c) of the PASA Act and with a view to preventing him from acting in any manner prejudicial to the maintenance of public order, passed the impugned order of detention against the petitioner, which has been challenged by the petitioner by way of this petition.

Having gone through the allegations made in the grounds of detention, it appears that the petitioner is manufacturing swords and knives and persons using such swords and knives had given the name of the petitioner to the police as the supplier of such swords and knives. In view of the fact that the offences under the Arms Act as well as under the Bombay Police Act have been registered against the petitioner, it is not desirable to express any opinion in this petition regarding the part played by the petitioner. However, one thing is clear that even in the registered cases against the petitioner and the incidents alleged against him, the persons themselves were responsible for the use of the weapons manufactured by the petitioner. Considering the statements of the

witnesses about the alleged incidents of different dates, it is absolutely clear without any manner of doubt that even if they are accepted as true, the same at best can be construed as breach of law and order but by no stretch of imagination they can be construed as breach of public order. These are the offences against the individuals for which the public at large is not concerned at all. After having read the statements it is clear that the allegations against the petitioner are vague and general in nature and therefore the subjective satisfaction arrived at by the detaining authority is not genuine. Consequently ,therefore, the order of detention is liable to be quashed and set aside.

In the result, this petition is allowed. The order of detention dated 6-1-1998 is quashed and set aside. The detenu Jitusing Shersinh Bavri is ordered to be released forthwith if not required in connection with any other offence. Rule is made absolute accordingly with no order as to costs.

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